Supreme Court, U.S.
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No. 95-1652

In the
Supreme Court of the United States.
OCTOBER TERM, 1995

MARY ALICE DYSON,
Petitioner,

v.

CITY OF PAWTUCKET, RICHARD ROUSSEAU AND DAUN WHITE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE RHODE ISLAND SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether proof of policy in a federal civil rights case can be proved by established custom and usage causally linked to the deprivation of plaintiff's civil rights by testimony from the defendants' long employed and well educated police officers or must the plaintiff go beyond custom and usage and specifically identify the person in authority formally establishing policy in order to hold a municipality responsible.

II. Whether a jury return of lower punitive damages of state law claims will cancel out and negate the jury return of greater punitive damages for violation of federal civil rights claims, where the trial judge in the Motion for a New Trial specifically found that the defendants' "most egregious conduct was the civil rights violation and the false arrest claims" on the ground of double damages, where the plaintiff suffered significant mental anguish, physical harm, lost wages and pain and suffering.

LISTING OF ALL PARTIES

The Plaintiff	Mary Alice Dawson
The Defendants	City of Pawtucket
	Pawtucket Police Officer Richard Rousseau
	Pawtucket Police Officer Daun White

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OPINIONS BELOW

The opinion of the Rhode Island Supreme Court, dated January 24, 1996, 670 A.2d 233 (1996) is printed in Appendix B hereto, at 6A. The decision of the trial judge's denial of the City's Motion for a Directed Verdict is printed in Appendix A hereto, at 1A.

JURISDICTION

The judgment of the Rhode Island Supreme Court in Appendix B, *infra*, was entered on January 24, 1996, in an opinion published as 670 A.2d 233 (R.I. 1996). The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1257(3).

STATUTE INVOLVED

42 U.S.C. § 1983. Civil action for deprivation of rights.

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This matter deals with a continuing incident that took place in the City of Pawtucket and State of Rhode Island near the area where the plaintiff lived, on or about January 29, 1984. The incident first occurred on Sales Avenue, later at a public phone station on Main Street — a block or so away from Sales Avenue, then at the police cruiser on Main Street parked nearby and finally at the Pawtucket Police Station. All of the parties herein lived in the City of Pawtucket.

The petitioner and her seventeen year old sister (Debbie) went to their mothers' friends house (Ernie LaFrenier) sometime well before midnight. Mr. LaFrenier's son (Jeff) and Jeff's friend (Danny) were at this home.

Later on, sometime after midnight, the petitioner ran out of cigarettes and wanted to go to a local 24-hour gas station for cigarettes, in her own car. Danny then said that he had gotten a "new" car and wanted them to all go in his car instead — so he could show it off. Danny was the driver, petitioner was seated in the front passenger seat and Debbie and Jeff were in the back seat.

Soon after leaving, Danny was stopped by Officer Clary of the Pawtucket Police. There was no valid reason whatsoever for the stop. There were no complaints, there was nothing suspicious, there was nothing unusual.

Danny was unable to produce his license. Officer Clary, then, made all of the passengers produce their respective licenses and car keys. Officer Clary seized the items and left the scene.

After petitioner and the others had been sitting in Danny's car for a while, Officer Clary returned. Coincidentally, another patrol car drove up and stopped. In that car were Pawtucket Police Officers Rousseau and White (the individual defendants). Officer Rousseau then came to the car and told them to "get the f_ _ _ out of the car."

Petitioner was not used to swearing. Petitioner asked the officer, "What's the problem." She was told to get the f_ _ _ out of the car. The petitioner and her sister, then exited the car, and went over to some nearby steps on the adjoining sidewalk. Officer Rousseau testified, that, at that time, neither the petitioner nor her sister was under arrest or had done anything wrong.

Officer Rousseau also related that neither of the young men were under arrest.

Petitioner and her sister observed the police search the young men, despite the fact, that, there was no reason to search them and nothing was found.

Petitioner and her sister then concluded that the male police officers would also search and feel them, and, if this was to be done, she wanted a female officer to conduct any search. Petitioner, then, wanted to call a senior officer at the nearby Pawtucket Police Station.

Petitioner then said to her sister, "Come on, Debbie, we'll use the pay phone and call the police." Petitioner and her sister then walked to the nearest pay phone, which was about a block or so away, on Main Street.

As petitioner was in the process of calling a senior officer at the Pawtucket Police Station on the outside pay phone, Officers Rousseau and White drove up and got out of the cruiser. They asked the petitioner what she was doing and she said "she was calling the police captain or chief on them." Officer Rousseau, who is twice the size of petitioner and in good physical condition and engaged in weight lifting programs, became quite upset.

Officer Rousseau ripped the phone out of petitioner's hands and threw the petitioner, who was then twenty-four years of age and weighed about one hundred pounds, away from the phone booth towards the nearby cruiser. He then began to smash her face into the police car about five times.

While petitioner's face was being smashed against the police cruiser she began pleading for him to stop, that he was hurting her. Officer White, who was five feet away, merely stood by.

Officer Rousseau then twisted her arms, put her in tight handcuffs and then placed petitioner and her sister in the police cruiser. There was no one around to hear or see what was going on at this pay phone area.

Neither the petitioner nor her sister, who both lived nearby in Pawtucket, had any record of even being stopped, let alone arrested. The petitioner's sister was also thin in appearance and weighed around ninety (90) pounds and was about the same five feet four inches in height.

The testimony established that the petitioner had welts and bumps on her forehead, her lip was bleeding, her wrists were sore and she had headaches and that she complained of this to the defendants and at the police station.

The testimony established that petitioner was placed in a cell with her sister. That she asked for a Kleenex to stop the bleeding and none was given and that when she asked to use a bathroom facility that was not in "plain view" of the male officers outside of her cell, that the officers "laughed at her" and said she would have to go in front of them.

The petitioner was not given medical attention and was charged with "disorderly conduct." Instead of given a summons for disorderly conduct, which is standard routine for residents with no criminal background, petitioner and her minor sister were both held overnight.

The charge of disorderly conduct was eventually dismissed in Superior Court.

The petitioner testified that when she was released, she went to the hospital, where the medical providers were concerned about a head concusion and other injuries. The hospital doctor told her she had a slight concussion. The petitioner said, in addition to the pain and suffering, time out of work, that the incident made her "very sick." "I couldn't eat and I just couldn't function . . . I couldn't handle doing anything." "Everything I did, I was too upset. I couldn't keep food in me, which made me sick . . . so I couldn't go too far" and "I was constantly with dry heaves." She related that she had "Nightmares for a long time . . . Nightmares of being put in jail, no one helping me, people laughing at me as I'm in jail . . . of not getting help."

Officer Clary and the two defendant officers, all of whom were college graduates, and with advanced degrees and a total of some forty (40) years as Pawtucket Police Officers, established that it was the policy of the Pawtucket Police Department to (1) stop cars in Pawtucket without probable cause, (2) stop passengers without probable cause and seize their licenses and keys, (3) run checks on all stopped persons, even the passenger — notwithstanding the fact that they lived nearby in Pawtucket or had done nothing wrong and that there was nothing linking them with anything, (4) that it was policy to prevent the plaintiff from calling an attorney, after she was placed under arrest, (6) that it was established policy that the arresting and assisting officer(s) not to say anything about the petitioner's (or other arrested person's) being injured — even though they had reason

to know of the injuries, (7) that it was up to the superior to determine if there were any injuries, (8) that it was the policy of the police department to give women a "Hobson's Choice" of using the toilet facilities in front of male officers — notwithstanding a reasonable request to use "private" toilet facilities and (9) that it was the policy of the Pawtucket Police Department to arrest for disorderly conduct, even if there was no members of the public present (contrary to established Rhode Island law on disorderly conduct).

TRAVEL OF THE CASE

The case was tried before Judge Maureen McKenna Goldberg and a jury in the Providence Superior Court on February 11, 12, and 15, 1993, on the Plaintiff's complaint for a police violation of federal civil rights and state law claims.

A special verdict form was submitted to the jury.

I. *Jury Verdict.*

The jury returned a verdict against defendants Rousseau and White for (1) assault and battery with compensatory and punitive damages, (2) for false arrest with compensatory and punitive damages, (3) for violation of her constitutional rights with compensatory and punitive damages, (4) for illegal arrest with compensatory and punitive damages. The total compensatory damages were $505.00 and the total punitive damages were $71,000.00.

The jury returned a verdict against the City of Pawtucket for deprivation of plaintiff's constitutional rights in the compensatory amount of $30,000.00.

II. *Motion for Directed Verdict.*

The City moved for Directed Verdicts on the ground that there was no policy evidence to warrant liability.

The trial judge was well aware of the issue in the policy areas and in denial of the motion, said:

> A City can only be held liable for wrongs which are committed pursuant to a policy of the City, out of an official policy, or from a practice that is so well ingrained that it rises to the level of a city policy. The police officers who have testified in this case at length about the various policies of the Pawtucket Police Department, and by their very testimony have in fact, brought the city into this case . . .
>
> We begin with the testimony of . . . White. He testified it is standard procedure . . . to have a backup car . . . It is city policy to take identification from passengers . . . It is policy . . . to write down the name and date of birth of the passenger, that it might take ten or fifteen minutes (Tr. p. 354-55).
>
> The testimony . . . leads this court to conclude that it is a department policy to detain people, to require their identification and take them into custody. I'm satisfied from the testimony . . . that the handling of prisoners is also a policy of the defendant City . . . There is a policy in the City of Pawtucket to detain people far beyond that which is authorized by the General Laws and to arrest them on something other than probable cause" (Tr. p. 357).

III. *Motion for a New Trial.*

The trial judge, who viewed the evidence and credibility of the witnesses, rendered a lengthy forty- (40) page decision in ruling on the defendants' Motion for

> a New Trial. On the issue of municipal liability, the trial judge said, "I'm satisfied with that the damage award against the City of Pawtucket is warranted." "The evidence . . . makes it clear it was departmental policy . . ." "That she had significant mental anguish, which is completely understandable . . . she suffered physical harm and has lost wages and pain and suffering, and that it is a reasonable verdict." The trial judge also found that the testimony of the defendant police officers was "outrageous" and their conduct "shocking."

The trial judge did, however, grant a remittitur on punitive damages and reduced the amount by almost $20,000.00.

RHODE ISLAND SUPREME COURT

The Rhode Island Supreme Court found that the trial judge was in error in not granting the City's Motion for a Directed Verdict, because the plaintiff failed to first identify those officials who spoke with final policy-making authority.

The Rhode Island Supreme Court also found that there could be no recovery for compensatory and punitive damages under a federal civil rights claim, where the jury also returned a state verdict in the federal civil rights action for assault and battery and false arrest.

REASONS FOR GRANTING THE WRIT

I. The Rhode Island Supreme Court has misinterpreted the Civil Rights Act to require the trial judge to first find and identify formal approval through the body's official decision making official and in effect negated custom and usage in oppo-

sition to the requirement under *Monell* v. *Dep't of Social Serv.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) where the trial judge, on the evidence record, found ample evidence to support established custom and usage of established policy which was causally linked to the civil rights violation activity.

II. The Rhode Island Supreme Court has effectively eliminated damages for civil rights violations where the jury also returns a verdict on both the federal constitutional and state tort claims, by holding that there can be no recovery for federal constitutional claims because it would be double damages and the state law damages preempt the federal claim for damages thereby making federal claims subject to local standards and not federal standards.

ARGUMENT

I. THE TRIAL JUDGE CORRECTLY FOLLOWED THE FEDERAL LAW OF CIVIL RIGHTS IN DENYING THE MOTION(S) FOR A DIRECTED VERDICT AND CAREFULLY CONSIDERED THE EVIDENCE IN FINDING THAT PLAINTIFF'S PROOF PRESENTED POLICIES OF ESTABLISHED CUSTOM AND USAGE THAT WAS CAUSALLY LINKED TO THE DEPRIVATION OF PLAINTIFF'S CIVIL RIGHTS IN CONNECTION WITH HER ARREST, TREATMENT AND FAILURE TO RENDER MEDICAL ASSISTANCE AND THE RHODE ISLAND SUPREME COURT MISINTERPRETED THE FEDERAL LAW OF CIVIL RIGHTS IN REVERSING THE TRIAL JUDGE'S DENIAL OF THE CITY'S MOTION FOR A DIRECTED VERDICT ON THE GROUND THAT PROOF OF CUSTOM AND USAGE IS NOT THE STANDARD OF PROOF, RATHER THAT THE STANDARD OF PROOF IS ONE THAT REQUIRES THE PLAINTIFF TO SPECIFICALLY IDENTIFY THE PERSON IN AUTHORITY FORMALLY ESTABLISHING MUNICIPAL AUTHORITY.

The defendant City of Pawtucket made Motions for Directed Verdict at the close of the plaintiff's case and again at the closure

of all of the evidence. The defendant City made the same argument for both Motions and the court made the same ruling, after carefully considering the evidence under the standards of *Monell* v. *Dep't of Social Serv.*, 436 U.S. 658, 989 S.Ct. 2018, 56 L.Ed.2d 611 (1978) and its progeny.

And, as in other jurisdictions, when passing on a Motion for Directed Verdict, the trial judge reviews the evidence in the light most favorable to the opposing party, giving that party the benefit of all reasonable and legitimate inferences, without weighing the evidence or passing on credibility. *See, e.g., AAA Pool Service & Supply Co.* v. *Aetna Casualty and Surety Co.*, 479 A.2d 112, 115 (R.I. 1984).

In the case at issue, the testimony as to "municipal policy" came in without objection through the testimony of three police officers, which included the two defendant officers. The police officers were all well educated and had been on the Pawtucket Police Department for a combined period of some forty (40) years. Two of the officers had Bachelors degrees and graduate degrees or studies.

Defendant White had been of the Pawtucket Police Department for almost fifteen (15) years, and had graduated from the Rhode Island Municipal Police Academy. Defendant White, who, along with defendant Rousseau, came on the scene as "back-up" officers, testified as to some of the ingrained policy, as follows:

> Q. Why would you ask passengers for identification, they have certainly done nothing wrong at that point? Is that policy of the police department?
> A. Yes, sir (Trial Transcript [Tr.], p. 30).

> Q. Did you learn . . . that at the policy academy that you had an obligation . . . to render medical attention . . .
> A. Department policy is . . . it's their determination.

Q. So, you didn't learn . . . that at the police academy, is that what you're telling us?
A. I'm telling you what department policy is. (Tr. p. 172).
Q. And did it dawn on you at that time, where you . . . you know she's got a bump on her head, that maybe you ought to tell some superior officer [she] might need some medical attention?
A. Not my responsibility.
Q. Not your responsibility?
A. No . . . this is department policy. (Tr. p. 180).

Defendant Rousseau, who had a Bachelor of Arts degree, a Bachelor of Science degree in accounting, and over twenty-four hours of graduate school, and who had been a teacher and an accountant before becoming a Pawtucket Police Officer, with almost seventeen (17) years on the Pawtucket Police Department, testified as to policy of arresting persons for disorderly conduct for yelling and screaming, as he claimed the plaintiff did. It is to be pointed out that some five years before plaintiff's arrest for disorderly conduct, that the law in Rhode Island was well established that there can be no disorderly conduct for yelling and swearing only at the police, where there are not members of the public present in *State* v. *Tavarozzi*, 445 A.2d 1048 (R.I. 1984).

And that the trial judge in ruling on the Motion for a New Trial said, "There is not a scintilla of evidence in this case to justify charging her with disorderly conduct."

Here defendant Rousseau testified as to the policy to charge for disorderly conduct:

Q. Now, is your use of discretion, is that a policy established by the Pawtucket Police?
A. Policy, understanding, probably so, sir. (Tr. p. 284).

As to the policy of one under arrest to call a lawyer, Officer Rousseau said:

> Q. So, she can't make a phone call?
> A. No, sir.
> Q. Is that the policy of the City of Pawtucket, that anybody who is detained cannot make a phone call?
> A. At the proper times, sir, they will be allowed a phone call.
> Q. It is the policy of the Pawtucket Police that only prisoners can make a phone call, people detained, they can't make one?
> A. We are in an investigatory stage, sir. (Tr. p. 266).

As to policy of rendering medical attention, Officer Rousseau said:

> Q. Do you ask her how she feels?
> A. No, sir.
> Q. Does anybody ask her?
> A. I believe the two sergeants . . .
> Q. Do you believe or do you know?
> A. Well, I would know, that is department policy. (Tr. p. 291).

There is no record dispute that the policy was testified to at length by the three long-time police officers. The Rhode Island Supreme Court in appellate review of petitioner's case, confirmed that the evidence established policy of the police department and said: "In the instant case, defendant officers testified at length regarding their understanding of the policies of the police department in regard to arrest, detention and medical attention for prisoners." *Id.* at 238.

It cannot be gainsaid that the trial judge was not well aware of the federal standards in establishing municipal liability in a

federal civil rights case. Because in her decision on the denial of the directed verdict motion, she said, "A City can be held liable for wrongs which are committed pursuant to a policy of the City, out of an official policy, or practice that is so well ingrained that it rises to the level of a city policy" in ruling on the Motion[s] for Directed Verdict.

In passing on these motions, the trial judge reviewed the evidence and said, "The police officers . . . by their very testimony, have, in fact, brought the city into this case. . . ." and that the testimony by the police officers established "ingrained practice and custom" that "is also a policy of the city." And those policies were "of an unconstitutional seizure of a person based on something less than probable cause" and "that there is a policy for the City to detain people far and beyond that which is authorized by the General Laws" and "to arrest them on something less than probable cause." The trial judge also found established custom and usage from the testimony of the three "veteran" officers of search without probable cause, filing of disorderly conduct charges without a scintilla of evidence, humiliation of women by forcing them to use the open toilet in full view of the male officers, outside of the cell, and a policy of indifference to the medical needs of arrested persons.

Despite a well reasoned liability determination on the directed verdict motion of "ingrained custom and usage" of civil rights violations, the Rhode Island Supreme Court, however, said the trial judge was in error in denying the Motion for a Directed Verdict, because, "a trial justice must first 'identify' those officials or governmental bodies who speak with final policy making authority . . ." *Id.* at 238, and cited *Jett* v. *Dallas Independent School District*, 491 U.S. 701, 109 S.Ct. 2702, 105 L.Ed.2d 508 (1989).

Notwithstanding the fact that the "defendant officers testified at length regarding their understanding of the policies of the police department in regard to arrest, detention, and medical

attention for prisoners"; the Rhode Island Supreme Court went on to hold, that this testimony was not sufficient, because "no evidence submitted to the trial justice identified the city official who had the power to make final municipal policy . . . (and) the trial justice also could not identify policy makers . . ." *Id.* at 238.

The Rhode Island decision, notwithstanding the established law that established custom is one of the accepted proofs for municipal liability, overrules the *Monell, supra*, on custom and usage and implied knowledge and reliance of municipal employees and thereby leaves the states free to change the federal law and national standards as to municipal liability in federal civil rights law.

This decision, if left unreviewed, could hamstring any attempt to have a federal national standard for municipal liability and would bar all proof in federal civil rights claims heard by the state courts — except proof by specific identity only. This would be contrary to established federal law.

II. The Rhode Island Supreme Court Has Fashioned a Damage Recovery Which Excludes Recovery for Federal Civil Rights Violations In the Event That Jury Reaches a Damage Award On State Torts As Well As For Damages For Federal Civil Rights Violations, Thereby Making the State Law Paramount to Federal Law and Canceling Any Claim For Constitutional Damage Violations.

In the instant case, a special jury verdict form was submitted to the jury which dealt with the following claims: 1) assault and battery by defendant Rousseau, 2) false arrest by defendant Rousseau, 3) false arrest by defendant White, 4) constitutional violation by use of excessive force by defendant Rousseau, 5) constitutional violations of illegal arrest by either defendants

Rousseau and White and, 6) violation by the City of Pawtucket as a result of custom or policy which directly caused deprivation of constitutional right (compensatory damages only).

The defendants made only one objection to the special jury verdict form and that objection dealt with jury interrogatory No. 4, constitutional violation claims based on use of excessive force and cited *Memphis Community School District* v. *Stachura*, 477 U.S. 299 (1985), as authority.

The jury returned verdicts for the plaintiff on (1), assault and battery by defendant Rousseau for $500,000 compensatory and $10,000 punitive, or (2), false arrest by defendant Rousseau for $1.00 compensatory and $10,000.00 punitive, on (3), false arrest by defendant White for $1.00 compensatory and $1,000.00 punitive, on (4) excessive force constitutional violation by defendant Rousseau for $1.00 compensatory and $20,000.00 punitive, on (5) illegal arrest constitutional violation by defendant Rousseau for $1.00 compensatory and $25,000.00 punitive and by defendant White for $1.00 compensatory and $5,000.00 punitive, and (6) of constitutional deprivation by the City as a result of custom and or policy directly caused for $30,000.00 compensatory.

On the Motion for a New Trial, the trial judge reduced the punitive damage awards by almost $20,000.00.

In her review of the Motion for a New Trial, the trial judge carefully reviewed all of the testimony in a decision that took over forty (40) transcript pages. The trial judge found the testimony of the Pawtucket Policy to have been "outrageous" and that the "most egregious conduct was the civil rights violation and the false arrest claims." The trial judge found the testimony of defendant Rousseau to be "lacking in all credibility."

As to the City, the trial judge said, "I'm satisfied that the compensatory damage award against the City of Pawtucket is warranted." The evidence and the testimony . . . make it abundantly clear that it was department policy . . . That she's had a

significant mental anguish, which is completely understandable, as a result of this incident. That she suffered physical harm and she had lost wages and pain and suffering, and that is a reasonable verdict."

On appeal, the Rhode Island Supreme Court said that the plaintiff, "having been awarded compensatory damages under state law cannot be allowed to recover compensatory damages for civil rights violations arising out of the same transaction." The court went on to say, "We vacate the awards to Dyson against both defendant officers on the civil rights claims as constituting double recovery for the same injury." *Id.* at 237.

The jury obviously took a different view on the damages, they awarded $10,000.00 punitive for the state assault and battery claim against defendant Rousseau and $20,000.00 punitive damages against Rousseau for constitutional violation of excessive force. In the state false arrest claim, the jury awarded $10,000.00 punitive damages against Rousseau and $1,000.00 punitive damages against White. In the constitutional claim for illegal arrest, the jury awarded $25,000.00 punitive damages against Rousseau and $5,000.00 punitive damages against White.

In effect, the state appellate court takes the position that, not only was there double punitive damages, but that notwithstanding the fact that the jury placed a higher value on constitutional claims, that the lower state tort claim is the measuring value.

The civil rights act specifically calls for punitive damages. Punitive damages are not double damages, they are damages to deter conduct. *See, e.g., Memphis Community Schools District* v. *Stachura, supra*, at 306, n.9. *Stachura* specifically noted that there was no "channge to the award of punitive damages" by the petitioners, at 302, n.2.

Here, the trial judge in the Motion for a New Trial stated that the defendants' "most egregious conduct was the civil rights violation." Clearly, the jury had viewed the evidence

in the same light as the trial judge; for the jury awarded greater punitive damages for the federal civil rights violations than for the state law claims. The jury placed a greater emphasis on protection of the Constitution.

Federal damage rules should control, so as to protect federal interests and promote uniformity. *Sullivan* v. *Little Hunting Park, Inc.*, 396 U.S. 229 (1969). The jury determination of a punitive damages for violation of a Constitutional right denied to Plaintiff is within its discretion in order to punish such egregious conduct and deter others from wilful violation of constitutional rights. *See, e.g., Smith* v. *Wade*, 461 U.S. 323 (1974).

The state court should not extend and construe "double damages" for the same compensatory under *Stachura* to rule out separate punitive damages for violation of positive federal civil rights. And, the state court should not read into *Stachura* that punitive damages are considered as "double damages," especially where that issue was not even decided or the award of punitive damages was even challenged.

Here, the Rhode Island Supreme Court was not dealing with damages for "abstract value" of civil rights. Here, the damages for violation of federal civil rights resulted from positive injuries arising from "egregious civil rights violations."

The state court ought not be allowed to take away from the jury its right to assess punitive damages for violation of constitutional rights and cancel out the civil rights statute under a theory that state torts subsume federal civil rights. The federal civil rights statute and case law have clearly established for punitive damages recovery in order to protect the constitution and deter others from attempting to violate constitutional rights. They jury ought to be allowed to send a message to violators.

CONCLUSION

For the foregoing reasons, plaintiff respectfully requests that the decision of the trial judge and jury be reinstated and that the decision of the Rhode Island Supreme Court be reversed.

Respectfully submitted,

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APPENDIX A.

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in and stop them. He doesn't step in and stop them, he is aiding and abetting in the assault, and that is the action we suggest ties in.

THE COURT: Very well. Thank you.

The Court, when it is confronted with a motion for a directed verdict pursuant to Rule 50, the Court is required to view all the evidence in the light most favorable to the party against whom the motion is made, and the Court is obliged to give the party, in this case the plaintiff, the benefit of all reasonable and legitimate inferences which may be properly drawn from the evidence, without sifting or weighing the evidence or exercising the Court's independent judgment as to the credibility of witnesses. And, after doing that, if the Court finds that there exists issues upon which reasonable persons might draw different conflicting conclusions, the motion should be denied, and the issues should be left for the jury to determine. The evidence should be considered in the light most favorable to the plaintiff without regard to who produced the evidence or without regard to the credibility of witnesses.

In this case the plaintiff has presented the testimony of several witnesses. With regard to the motion for a directed verdict against the City of Pawtucket on the civil rights claims, it is clear that a

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municipality may not be held liable under 42 U.S.C. Section 1983 for the independent acts of its employees. A city can only be held liable for wrongs which are committed pursuant to a policy of the city, out of an

official policy, or from a practice that is so well engrained that it rises to the level of a city policy. The police officers who have testified in this case both have testified at length about various policies of the Pawtucket Police Department, and by their very testimony have, in fact, brought the city into this case and have subjected the city to liability.

We began with the testimony of defendant Daun White. He testified that he was the second man in a two-man car driven by Officer Rousseau, that it is standard procedure in the police department to have a backup car assist an officer who has a car at the scene. The procedure is to notify control that you are out with a car, give the plate, the description, the number of occupants, the location, the license, and registration. It is a city policy to take identification from the passengers where the license and registration of the driver is not produced. If it's not produced, you check a little further and you get identification of the passengers in the vehicle. It is the policy of the police department that if the passengers have no license

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to write down the name and date of birth of the passenger, that it might take ten or fifteen minutes to get back this information. If the passenger's information is negative, you return the identification to them and they can leave. If they are women and the vehicle is unregistered and going to be towed and it is two or thee o'clock in the morning, then you make arrangements for another vehicle to give them a ride home.

Officer White testified that according to his experience and training, where the driver is unable to

produce a license and registration, that gives rise to sufficient suspicion to warrant a search of the vehicle.

According to Officer White he observed Officer Rousseau order the males out of the car and search the males. He then ordered the females out of the vehicle and began a search of the vehicle. Officer White testified that he can't say if anyone told the females to get out of the car because his attention was on the males and that he has no recollection of Officer Rousseau telling females to get out, but he must have because they got out. His responsibility was to watch the males.

He said his attention was drawn to the two females who were running down the street. They chased the

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females in the car. They arrived at the telephone booth and the females were arrested. He said the women were taken to the cellblock, they were locked in the cell. There was no testimony introduced by either party that the checks ever came back from Officer Clary while they were still at the scene, but what is clear is they were taken to the police station, placed in a cellblock and locked in a cell.

According to Officer White he observed injuries on the plaintiff, a red nob on her forehead, and possibly a small bump. No one asked her about medical attention, but it is again the defendant's policy to have a sergeant view all the prisoners. It is the responsibility of the sergeant and the department policy is the supervisor is in charge of the prisoners and views all the prisoners.

When asked if any effort was made to obtain medical attention for the plaintiff, Officer White insisted that

it was not his responsibility. The Court also recalls that was the defendant Officer Rousseau, that it was not his responsibility, that it was the responsibility of the sergeant pursuant to the department policy.

The testimony of both Defendant White and Defendant Rousseau leads this Court to conclude that it is a department policy to detain people, to require

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their identification, and to take them into custody.

I'm satisfied from the testimony of both Detective White and Detective Rousseau that the handling of prisoners is also a policy of the defendant City of Pawtucket and it is the handling of these prisoners which make up — or the plaintiff, while she was a prisoner, which makes up a portion of the plaintiff's civil rights claim. The civil rights claim also includes an allegation of an unconstitutional seizure of a person based upon something less than probable cause.

I'm satisfied from the testimony of Detective White and Detective — strike that — of Officer White and Detective Rousseau that there is a policy in the City of Pawtucket to detain people far and beyond that which is authorized by the General Laws, and to arrest them on something other than probable cause.

The motion for a directed verdict against the City of Pawtucket on the 1983 claim is granted.

With regard to a motion for a directed verdict for the claim against the defendant Daun White on the assault and battery claim, the Court grants the motion.

There is no evidence in this case that Officer White put his hands on this plaintiff at all, period. There's no evidence from either side, and I'm satisfied that his participation was with respect to the arrest of

arrest. They indicated that they went to a telephone booth to use the phone, that they walked to the booth, they did not run, and Mary was about to put the phone in her hand, and was about to put the coin in the box when the police came and arrested them. Both Defendant White and Defendant Rousseau have testified that when they arrived at the phone booth the plaintiff had the phone in her hand and she was yelling and hysterical. I would submit that yelling and hysterical may very well not fall within the disorderly conduct statute. That is a question for the jury to determine.

The motion for a judgment of acquittal is denied — a directed verdict is denied. I'll ask you to get the jury.

MR. COLUCCI: Your Honor, one thing before the jury. I think you said the City's motion was granted. I think you meant to deny that.

THE COURT: On which one?

MR. COLUCCI: Against the city.

THE COURT: The City of Pawtucket, the 1983 claim, the motion for a directed verdict is denied. The defendant's motion with regard to Defendant White is granted. He is directed out on the assault and battery claim, and the false arrest claim is alive.

MR. COLUCCI: And, your Honor, just one more thing

APPENDIX B.

670 A.2d 233 (R.I. 1996)

MARY ALICE DYSON

v.

CITY OF PAWTUCKET, ET AL.,

No. 93-506-Appeal.

Supreme Court of Rhode Island.

Jan. 24, 1996.

Arrestee sued city and police officers for assault and battery, false arrest, and violation of her constitutional rights. The Superior Court, Providence County, McKenna Goldberg, J., directed verdict in favor of one officer on assault and battery count, entered judgment following jury verdict in favor of plaintiff on remaining counts, and reduced jury's award of punitive damages. Defendants appealed. The Supreme Court, Weisberger, C.J., held that: (1) plaintiff could not recover compensatory or punitive damages under § 1983 for civil rights violations arising from same transaction for which she was awarded compensatory and punitive damages under state law; (2) city was entitled to directed verdict; and (3) plaintiff's subsequent conviction on charge of disorderly conduct did not free officer from liability for false arrest.

Affirmed in part and reversed in part.

OPINION

WEISBERGER, Chief Justice.

This case comes before us on appeal by the defendants Daun White (White) and Richard Rousseau (Rousseau) of the Pawtucket Police Department, and the defendant city of Pawtucket (city), from entry of judgment in favor of the plaintiff, Mary Alice Dyson (Dyson), in Superior Court based on her action for assault and battery, false arrest, and violation of her constitutional rights under 42 U.S.C. § 1983.[1] At the conclusion of the plaintiff's case, White moved for a directed verdict on the assault-and-battery allegations against him. The city moved for a directed verdict on the 42 U.S.C. § 1983 claims. Rousseau and White also moved for a directed verdict on Dyson's false-arrest claim. Rousseau and White claimed that Dyson was precluded from bringing a false-arrest claim because she was found guilty in the District Court of disorderly conduct. The trial justice granted the motion in regard to White on the assault-and-battery claim and denied the motion in regard to the city. The trial justice denied the motion in respect to the charge of false arrest against Rousseau and White. At the close of all the evidence defendants renewed the remaining motions. The trial justice again denied the motion on the false-arrest claim but reserved decision on the 42 U.S.C. § 1983 claim

[1] U.S.C. § 1983 provides a cause of action "in favor of persons who are deprived of 'rights, privileges, or immunities secured' to them by the Constitution. *Memphis Community School District* v. *Stachura*, 477 U.S. 299, 305-06, 106 S.Ct. 2537, 2542, 911 L.Ed.2d 249, 258 (1986) (quoting *Carey* v. *Paplas*, 435 U.S. 247, 253, 98 S.Ct. 1042, 1047, 55 L.Ed.2d 252, 258 (1978)). Section 1983 of 42 U.S.C. provides in pertinent part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

against the city. The trial justice denied the directed verdict in respect to the city after the jury verdict was rendered.

The jury returned a verdict for Dyson and awarded her $101,505 in damages. In March 1993, White, Rousseau, and the city filed a motion for a new trial. The motion was denied. However, the trial justice reduced the punitive award against Rousseau on the civil rights excessive-force claims. The trial justice also reduced the punitive-damage award against Rousseau and White for false arrest. We affirm the original judgments in part and reverse in part. The facts of the case as are pertinent to defendants' appeal are as follows.

On January 30, 1986, Dyson initiated the present action for false-arrest, assault-and-battery, and civil rights violations. At trial she testified that she and her sister were passengers in a car that was stopped by Pawtucket Police Officer Douglas Clary (Clary) on January 28, 1986. Clary requested the driver's license and registration. On being informed that the driver did not have his license or registration, Clary then requested identification from the three passengers. Dyson gave the officer her license and identification. Rousseau and White arrived at the scene shortly thereafter to provide backup. Dyson testified that Rousseau swore at her and ordered her out of the car. She got out of the car, walked a short distance from the car, and sat down on the front steps of a house. She said that she was not told that she was under arrest. She and her sister then went to a nearby phone booth to report Rousseau to his superiors for his improper conduct. Dyson said that she did not flee or run to the phone booth. She did not hear anyone telling her not to leave the area or warning her to stop. While she was at the phone booth, Rousseau arrived and asked her what she was doing. She told Rousseau that she was calling the police. According to plaintiff, Rousseau grabbed her, placed her hands behind her back, and took her to the police car, where he "smashed" her head against the trunk approximately five times.

Dyson was then put into the police car and taken to the police station. While at the station, she complained that her head and her hands were hurt. However, she was not offered any medical attention, and when she asked for something to wipe her mouth, which was bleeding, she was refused.

White testified that he and Rousseau responded to the scene as a backup unit. White observed Rousseau search the vehicle. He also saw Dyson and her sister exit the vehicle. He next heard Clary shout to Dyson and her sister, "Where are you going?" White then saw two females running down the street. Clary told the women to come back, but his police report did not reflect this fact. The defendants White and Rousseau then pursued Dyson and her sister in their vehicle. They found both women at a nearby phone booth. White did not see anything that happened between Rousseau and Dyson. He observed Dyson in handcuffs being placed into the police cruiser. White then handcuffed Dyson's sister. He said that after the women were taken to the station and placed in a cell, he noticed a redness on Dyson's forehead and possibly a bump. However, he said that he did not ask Dyson about her injuries, nor did he tell anyone else. He stated that it was department policy that the sergeant — not a patrol officer — determines if a prisoner is in need of medical attention.

Rousseau testified that he accompanied White in the backup unit. He said that he approached the vehicle and told the driver to get out of the car. The other male passenger also got out of the car. After conducting a pat-down search of the driver and the other male passenger, Rousseau instructed them to stay by the car. He then told Dyson and her sister to get out of the car but acknowledged that neither had done anything wrong. He said that he "probably" had used vulgar language. He told the women to sit down near a wall, even though he had no reason to place them under arrest at the time. He next heard someone yelling, "Where are you going?" and noticed

Dyson and her sister leaving the area. Both White and Rousseau pursued both women to a nearby phone booth. After pulling up to the phone booth, Rousseau ordered Dyson to put the phone down. He said he thought Dyson was calling either her father or the police department. He said that he grabbed Dyson by the shoulders to prevent her from moving and assisted her with putting the phone down. According to Rousseau, Dyson resisted putting the phone down and attempted to strike him. He claimed that when he tried to put her into the patrol car, the momentum generated by her attempt to hit him sent her toward the car and caused her to smash her face on the car. After the plaintiff hit the car, Rousseau arrested her for disorderly conduct and handcuffed her. Rousseau said that he did not determine that Dyson was in need of medical treatment, although he did observe that she had a cut lip and redness on her forehead. Rousseau observed that while Dyson was in her cell, two superior officers casually examined her for injuries. He testified that Dyson did not ask for medical attention, nor did she complain that he had abused her.

In support of their appeal defendants raise three issues. These issues will be dealt with in the order in which they were raised. Further facts will be supplied as necessary to discuss the issues.

I

Whether The Trial Justice Erred in Allowing The Jury To Render Separate Damage Awards For The Same Conduct

At the close of the case the jury found for Dyson and awarded the following damages against Rousseau: (1) compensatory damages of $500 and punitive damages of $10,000 for assault and battery and compensatory damages for $1 and punitive damages of $20,000 for constitutional violations associated

with the assault-and-battery claim; and (2) compensatory damages of $1 and punitive damages of $10,000 for false arrest and compensatory damages of $1 and punitive damages of $25,000 for constitutional violations associated with the false-arrest claim. The jury awarded the following against White: (1) compensatory damages of $1 and punitive damages of $1,000 for false arrest and (2) compensatory damages of $1 and punitive damages of $5,000 for constitutional violations associated with the false-arrest claim. The jury awarded plaintiff compensatory damages of $30,000 against the city for violations of plaintiff's civil rights under 42 U.S.C. § 1983.

The defendants argue that the verdict-interrogatory form given to the jury allowed it to award separate damages for the state-law claims and for the associated constitutional violations. They contend that the jury should have been instructed to award one amount if it found either a state-law violation or a constitutional violation or both on either claim. The defendants also contend that the trial justice further erred by instructing the jury that plaintiff was entitled to separate relief for constitutional violations.

[1-3] Prior to considering whether the trial justice erred in her instruction and submission of interrogatories to the jury, we must address whether defendants' claim of error has been waived. The plaintiff alleges that defendants did not object to specific interrogatories or to the instructions save for one objection to the jury verdict itself. General objections to instructions, without specific grounds, are not a sufficient basis for review by this court. *Brodeux* v. *Desrosiers*, 505 A.2d 418, 422 (R.I. 1986). Rule 51(b) of the Superior Court Rules of Civil Procedure provides that:

> "No party may assign as error the giving or the failure to give an instruction unless the party objects thereto

> before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the party's objection."

However, this court will not interpret Rule 51(b) rigidly in order to overlook trial errors. In *Belanger* v. *Silva*, 120 R.I. 19, 27, 384 A.2d 605, 610 (1978), we stated that "a trial justice's refusal to charge * * * can be assigned as a ground of appeal only if a request was made to charge differently or if objection was made to the charge as given." In the instant matter defendants objected to the trial justice's refusal to instruct as they had requested in a pretrial memorandum where requested jury instructions were listed. The defendants also objected to interrogatory No. 4. Although they did not state with specificity the reasons for their objections to the jury instructions, their objection to instructions, interrogatory No. 4, and to various charges is sufficient to preserve the issue for review.

[4, 5] Compensatory damages under 42 U.S.C. § 1983 are only available to discharge actual injury. *Memphis Community School District* v. *Stachura*, 477 U.S. 299, 307, 106 S.Ct. 2537, 2543, 91 L.Ed.2d 249, 259 (1986). Further, damages awarded for actual harm are ordinarily assumed to deter constitutional violations. *Id.* at 309, 106 S.Ct. at 2544, 91 L.Ed.2d at 260. We are also persuaded by a recent decision of the Supreme Court of Connecticut in which a plaintiff was estopped from bringing suit under state law against police for assault and battery and negligence after he was awarded damages in a previous federal suit under 42 U.S.C. § 1983 alleging the same claims. *Virgo* v. *Lyons*, 209 Conn. 497, 651 A.2d 1243 (1988). In *Virgo* the court noted that the interrelationship between § 1988 and common-law tort claims is widely recognized. 209 Conn. at 502, 551 A.2d at 1246. Moreover, § 1983

damages are ordinarily calculated following the rules applicable to common law torts. 209 Conn. at 501-05, 551 A.2d at 1274. In *Virgo*, the court commented that because 42 U.S.C. § 1983 provides damages for actual injuries, the plaintiff would not be permitted to relitigate the issue of damages under state law for the same alleged wrongs of the same defendants and involving the same injuries. *Id.* at 502, 551 A.2d at 1245.

[6] We agree with defendants that the jury awards in the instant case allowed Dyson to recover damages for both the torts and the civil rights claims based upon the same facts, resulting in double recovery for the same injury. We conclude that having been awarded compensatory and punitive damages under state law, Dyson cannot be allowed to recover compensatory and punitive damages for civil rights violations arising from the same transaction. We therefore affirm the awards for compensatory damages in the amount of $500 and punitive damages in the amount of $10,000 against defendant Rousseau for assault and battery, compensatory damages in the amount of $1 and punitive damages for $10,000 against defendant Rousseau for false arrest, and compensatory damages for $1 and punitive damages of $1,000 against defendat White for false arrest. We vacate the award to Dyson against both defendant officers on the civil rights claims as constituting double recovery for the same injury.

II

Whether The Trial Justice Erred By Denying The City's Motion For A Directed Verdict On The Count Alleging Municipal Liability Under 42 U.S.C. § 1983

The defendant municipality contends that there was insufficient evidence to support the action against it under 42 U.S.C. § 1983 and that, therefore, the trial justice erred in not granting

its motion for a directed verdict. The defendant municipality argues that the trial justice erred in finding that the police officers were following departmental policies regarding detention of individuals and medical attention for prisoners. The defendant municipality also argues that the wrongful actions of an officer are insufficient to establish municipal policy. We agree with defendant's contentions but on different grounds from those advanced.

[7-9] In reviewing a motion for a directed verdict, we must view the evidence in the light most favorable to the nonmoving party and give that party the benefit of all reasonable and legitimate inferences that may properly be drawn from the evidence, without weighing the evidence or assessing the credibility of the witnesses. *Jameson* v. *Hawthorne*, 635 A.2d 1167, 1171 (R.I. 1994). This court must decide whether the jury could find any policy attributable to the municipality that violated the plaintiff's constitutional rights. Municipal liability under 42 U.S.C. § 1983 attaches only when a deliberate choice to follow a course of action is made by the official or officials responsible for establishing final policy with respect to the subject matter in question. *Pembaur* v. *Cincinnati*, 475 U.S. 469, 483-84, 106 S.Ct. 1292, 1300, 89 L.Ed.2d 452, 465 (1986). The word " 'policy' generally implies a course of action consciously chosen from among various alternatives." *Id.* at 484, 106 S.Ct. at 1300, 89 L.Ed.2d at 465. In determining municipal liability, a trial justice must first "identify those officials or governmental bodies who speak with final policy making authority for the local governmental actor concerning the action alleged to have caused the particular constitutional or statutory violation at issue." *Jett* v. *Dallas Independent School District*, 491 U.S. 701, 737, 109 S.Ct. 2702, 2724, 105 L.Ed.2d 598, 628 (1989). "Once those officials who have the power to make official policy on a particular issue have been

identified, it is for the jury to determine whether *their* decisions have caused the deprivation of rights at issue, by policies which affirmatively command that it occur * * * or by acquiescence in a longstanding practice or custom which constitutes the 'standard operating procedure' of the local government entity." *Id.*

[10] In the instant case, defendant officers testified at length regarding their understanding of the policies of the police department in regard to arrest, detention, and medical attention for prisoners. However, no evidence submitted to the trial justice identified the city official who had the power to make final municipal policy with respect to detention of suspects by police officers, nor was there evidence on the record from which the identity of the policy-making officials could be inferred. From the evidence provided, the trial justice also could not identify the policy makers for the police department with respect to medical care for prisoners. Without these determinations, the question of whether defendant officers' conduct respecting the detention of Dyson and her request for medical care was the result of conscious decisions that reflected final municipal policy under 42 U.S.C. § 1983 was not properly before the jury. We conclude, therefore, that a directed verdict should have been granted on the question of municipal liability under 42 U.S.C. § 1983.

III

Whether A Guilty Finding In District Court Precluded A Subsequent Civil Action For False Arrest

The defendant officers contend that the trial justice erred in not granting a directed verdict when Dyson was found guilty in the District Court on the charge of disorderly conduct. The

defendants argue that the guilty finding precluded a subsequent civil action for false arrest on the same charge. The defendants analogize the rule for malicious-prosecution cases for their argument that Dyson's prior conviction for disorderly conduct established probable cause and that an action for false arrest should therefore have been precluded. We disagree with these contentions.